

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:

Policies and Rules Pertaining to
the Equal Access Obligations of
Cellular Licensees

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RM-8012

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY OF
MCCAW CELLULAR COMMUNICATIONS, INC.

McCaw Cellular Communications, Inc. ("McCaw"), by its attorneys, respectfully submits its reply to the opening comments filed in the above-captioned proceeding. For the reasons discussed herein and in McCaw's comments, MCI's Petition for Rulemaking should promptly be dismissed.

I. INTRODUCTION

In its opening comments, McCaw explained that cellular equal access requirements are unwarranted and contrary to the public interest for several reasons. First, such requirements are legally unsupportable because cellular carriers do not enjoy monopoly control of an access bottleneck. The cellular industry is competitive, and the Commission is injecting additional sources of competition into the marketplace. Second, equal access would not yield tangible consumer benefits, and in many cases could increase costs to subscribers. For example, it would preclude regional pricing plans that save money over traditional IXC charges, prevent mobile carriers from obtaining and sharing bulk long distance discounts, and impose significant

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implementation and administration costs. Third, cellular is evolving into a service that offers efficient, transparent service over geographic areas corresponding to customer demand rather than exchange, LATA, or state boundaries. Equal access would stunt the development of the cellular industry, negate existing investments in seamless, wide-area systems, create disincentives to further improvements, and hamper cellular carriers' efforts to compete against other wireless service providers to meet the end-to-end communications needs of mobile users.

As discussed below, many cellular carriers submitted detailed comments confirming and supplementing these points. These parties demonstrated beyond any doubt that cellular equal access is legally unjustified, inconsistent with effective wireless competition, devoid of appreciable consumer benefits, technically difficult (or even impossible) in many situations, and unreasonably burdensome.

In contrast, the few IXCs that favored a cellular equal access requirement filed perfunctory and conclusory pleadings. In general, they simply repeated, without elaboration, MCI's erroneous assertion that cellular equal access would benefit consumers and promote interexchange competition. Because neither MCI nor its supporters have demonstrated that cellular equal access would serve any purpose beyond shifting revenues to the IXCs, MCI's petition must be dismissed.

II. THE COMMENTS OF CELLULAR CARRIERS COMPELLINGLY
DEMONSTRATE THAT A CELLULAR EQUAL ACCESS REQUIREMENT
WOULD DISSERVE THE PUBLIC INTEREST.

Small, medium, and large cellular companies, wireline and non-wireline alike, filed detailed comments explaining that there is no legal, policy, or factual basis for imposing equal access requirements on cellular carriers. The reasons are clear and compelling:

Cellular is a competitive industry without monopoly control of an access bottleneck. More than a dozen commenters noted that equal access requirements historically have been applied only to entities enjoying monopoly control of an access bottleneck. These parties explained that, in contrast to landline local exchange carriers, each cellular carrier faces competition from another licensee and from resellers. They also pointed out that enhanced SMR systems can provide services that are functionally equivalent to cellular and that, through the proposed authorization of new PCS providers, the Commission intends to increase mobile service competition even further. Accordingly, there is no legal justification for imposing equal access requirements on cellular carriers.¹

¹ See Alltel Service Corporation ("Alltel") at 1-2; Cellular information Systems, Inc. ("CIS") at 2, 5-7; Cellular Telecommunications Industry Association ("CTIA") at 4-5; Cellwave, Inc. ("Cellwave") at 2-3; Centel Cellular Company ("Centel") at 3-6; Dobson Cellular Systems, Inc. ("Dobson") at 3-7; GTE Service Corporation ("GTE") at 4; National Telephone Cooperative Association ("NTCA") at 3;
(continued...)

Current cellular industry practices benefit consumers.

Numerous cellular carriers described how they provide seamless, wide-area service at lower rates than would be available from IXCs. These commenters also pointed out that many cellular carriers share with their customers bulk discounts obtained from IXCs.² Equal access would preclude these beneficial practices.

Cellular subscribers already may access the IXC of their choice. A wide range of carriers rebutted MCI's claim that cellular subscribers currently have no choice of IXCs. These carriers noted that cellular customers may access the IXC of their choice by dialing an 800 or 950 number, or in many cases, by using a 10XXX access arrangement.³ These numbers

¹(...continued)
PMN, Inc. ("PMN") at 2-4; RFB Cellular, Inc. ("RFB") at 5-7; Rochester Telephone Mobile Communications ("Rochester") at 3; SNET Cellular, Inc. ("SNET") at 3-4; Southwestern Bell Corporation ("SBC") at 3-4.

² See Cellwave at 4; Centel at 7-8; Pioneer Telephone Cooperative Inc. ("Pioneer") at 5-6; PMN at 6-7; Rochester at 2-3.

McCaw gave several examples of wide-area calling plans that saved customers 30 to 50 percent over the charges that would apply under an equal access scheme. McCaw at 14. It wishes to clarify that, in Example 3 in its comments, McCaw does not own the cellular system in Couer d'Alene, Idaho; it has a switch-sharing arrangement with the non-wireline licensee. Nonetheless, the pricing example remains valid, and serves to demonstrate that the marketplace demand for wide-area services encourages carriers to cooperate in implementing seamless regional service.

³ See Cellwave at 4; Centel at 7; GTE at 5; SNET at 5n.3; SBC at 8.

usually can be pre-programmed into today's intelligent cellular handsets so that no cumbersome dialing is required.

There is little customer demand for cellular equal access. Many carriers stated that, in their experience, very few cellular subscribers are interested in being able to presubscribe to an IXC.⁴ This provides additional evidence that cellular equal access would yield no tangible consumer benefits.

Cellular equal access requirements would impose significant costs. Large and small carriers alike cautioned that equal access would impose substantial costs on service providers and their subscribers.⁵ Given the lack of corresponding benefits, many of these entities pointed out that resources expended on equal access would be better used

⁴ See Ally, Inc. et al. ("Ally") at 4-7 (only 0.5 percent of subscribers have inquired about presubscription); CTIA at 2n.2; Comcast Cellular Communications, Inc. ("Comcast") at 3; The Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO") at 6; PMN at 6; Rochester at 3; SNET at 5 (there are at least four areas of higher priority for subscribers: coverage, clear transmission, call hand-off and call delivery); Telephone and Data Systems, Inc. ("TDS") at 4.

⁵ See Alltel at 2-3; Ally at 9-13; BMCT, L.P. ("BMCT") at 2-4 (equal access would cost approximately \$219,000 to implement for 3500 subscribers); CIS at 3; CTIA at 10-12 (equal access costs per subscriber would be higher than in the landline context); Comcast at 4; GTE at 6-7; OPASTCO at 5-6; Pioneer at 5; RFB at 2-3; TDS at 2-4 (equal access implementation would cost \$3.4 million initially and \$700,000 per year in recurring costs); Vanguard Cellular Systems, Inc. ("Vanguard") at 2, 5-6 (equal access would cost \$30,000 per market, not including the costs of balloting and administration).

to expand coverage, install digital technology, and deploy other system improvements.⁶

Equal access would be difficult or impossible to implement in many situations. A number of licensees showed that equal access is impossible to implement when a call is handed off to an adjacent system. In addition, providing equal access to roamers would be very difficult.⁷

Imposing equal access requirements on cellular carriers would hinder mobile services competition. Many carriers pointed out that placing unique equal access requirements on cellular carriers would hamper their ability to compete against ESMR systems and new PCS providers in meeting the end-to-end communications needs of mobile service users.⁸ Several of these entities explained that consumers would be far better off if all wireless providers are free to structure their services to respond to marketplace demands, rather than if they are encumbered by artificial and unnecessary equal access requirements.⁹

⁶ See Ally at 13; Centel at 12; SNET at 5; TDS at 4; Vanguard at 7.

⁷ See Centel at 8-9; CTIA at 11-12; GTE at 7; NTCA at 4; PMN at 5-6.

⁸ See Bell Atlantic at 1-2; BMCT at 2; Cellwave at 2-3; Centel at 14; Dobson at 6-7; Pioneer at 3-4; SBC at 4.

⁹ McCaw would hasten to add, however, that if the Commission initiates a cellular equal access rulemaking, it should propose to extend such requirements to all mobile service providers, including cellular resellers. An equal access obligation imposed solely on cellular licensees would
(continued...)

III. THE FEW PARTIES SUPPORTING MCI'S PETITION FAILED TO SHOW THAT CELLULAR EQUAL ACCESS IS JUSTIFIED.

In stark contrast to the comprehensive, detailed cellular industry filings discussed above, the proponents of cellular equal access submitted perfunctory pleadings that, for the most part, simply alluded to vague and undocumented consumer and competitive benefits. Their arguments are unpersuasive.

The IXCs contend principally that cellular equal access is necessary to promote customer choice.¹⁰ This is not true. Cellular subscribers already can choose whichever IXC they wish to handle their interstate long distance calls by dialing an 800 or 950 number or, in many areas, using a 10XXX access code. Although it is correct that subscribers to non-BOC cellular carriers cannot presubscribe to an IXC, the record shows that the vast majority of cellular customers have little interest in presubscription.¹¹ Rather, they want convenient, seamless, wide-area and nationwide service at

⁹(...continued)
distort competition, and thereby harm consumers, more than a universal equal access requirement would.

¹⁰ See Advanced Telecommunications Corporation ("ATC") and LDDS Communications, Inc. ("LDDS") at 1-2 (asserting that subscribers are upset that they cannot choose their long distance carrier); American Telephone and Telegraph Company ("AT&T") at 1-4; The Competitive Telecommunications Association ("CompTel") at 2-4; OCOM Corporation ("OCOM") at 1.

¹¹ See page 5, supra.

affordable rates -- and that is exactly what cellular carriers are providing under the Commission's existing rules.

Several IXC's also assert that cellular equal access would promote interexchange competition.¹² This argument, too, cannot withstand scrutiny. Current cellular industry practices promote long distance competition, because IXC's compete intensely to serve the long distance traffic aggregated by cellular carriers. This competition directly benefits cellular subscribers. Many cellular carriers share the cost savings with their customers, and others use the savings to invest in their systems, reduce capital costs, and hold down rates. Thus, as McCaw explained in its comments,¹³ cellular equal access would merely shift revenues from cellular carriers to IXC's; it would not promote interexchange competition.¹⁴

¹² See CompTel at 4; OCOM at 3; WilTel, Inc. ("WilTel") at 2-3. One IXC argues that the failure to provide equal access violates the Communications Act and the Sherman Act. WilTel at 6-7. This is untenable. As McCaw and numerous other parties have explained, equal access requirements have been imposed only on carriers enjoying monopoly control of an access bottleneck. Neither statute requires that equal access be provided by carriers, such as cellular licensees, that do not enjoy such control.

¹³ McCaw at 15.

¹⁴ Moreover, as CTIA and PMN point out, long distance interstate cellular traffic accounts for less than one percent of all interstate long distance traffic. See CTIA at 14; PMN at 3. Consequently, cellular equal access would have no appreciable effect on interexchange competition in any event.

One long distance carrier contends that cellular equal access is necessary to enable IXC's to plan and offer service on a reasonably uniform basis nationwide.¹⁵ It gives no concrete illustration, however, of how its plans are being compromised. Even if current cellular policies in some way prevented IXC's from marketing their services exactly as they desired, this alone would provide no basis for imposing a cellular equal access obligation, given the relatively minor amount of interstate long distance cellular traffic.

Finally, another IXC claims that the lack of cellular equal access adversely affects network reliability.¹⁶ It asserts that, if AT&T's network goes down, subscribers to non-BOC cellular carriers would be unable to place long distance calls. There is no basis for this argument. While many non-BOC cellular licensees use AT&T to carry their long distance traffic, subscribers can always access other carriers by dialing the appropriate 800/950 number or access

¹⁵ AT&T at 3.

¹⁶ WilTel at 8. WilTel also asks the Commission to bar cellular carriers from reselling long distance service as a means of preventing discrimination. *Id.* at 8-9. There is no precedent for imposing such a protectionist restriction. The Commission affirmatively allows landline LECs, which enjoy monopoly control of an access bottleneck, to provide long distance services as either resellers or facilities-based carriers. Clearly, then, there is no basis for barring competitive cellular carriers from providing long distance services. Nonetheless, as McCaw noted in its comments, it is appropriate to prohibit the BOCs' cellular affiliates from offering long distance services in order to prevent them from leveraging their landline monopolies to diminish wireless competition. McCaw at 3n.2.

code. They are no more susceptible to outages in AT&T's network than are landline subscribers, even without a cellular equal access requirement.

IV. CONCLUSION

There is no basis in law, policy, or fact for the Commission to burden the competitive and still developing cellular industry with onerous and intrusive equal access requirements. Consequently, MCI's Petition should be promptly dismissed.

Respectfully submitted,

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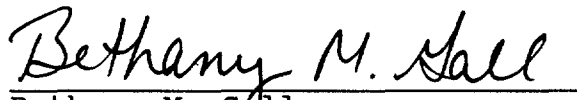
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I hereby certify that on this 15th day of October, 1992,
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